

that the proposed project would not result in an unacceptable risk to the national security of the United States, it shall make a recommendation to the senior official to that effect.

(2) If the senior official concurs with the recommendation of the Clearinghouse, the senior official shall make a recommendation to the senior officer that is consistent with the recommendation of the Clearinghouse. If the senior official does not agree with the recommendation of the Clearinghouse, the senior official may make a recommendation to the senior officer to that effect.

(3) The senior officer shall consider the recommendation of the senior official, and, after giving full consideration to mitigation actions available to the DoD and those agreed to by the applicant, determine whether the proposed project would result in an unacceptable risk to the national security of the United States. If the senior officer makes such a determination, the senior officer shall convey that determination to the Secretary of Transportation, identifying which of the three criteria in §211.3 creates the unacceptable risk to the national security of the United States.

(d) The Clearinghouse may, on behalf of itself, the senior official, or the senior officer, seek an extension of time from the Secretary of Transportation for consideration of the application.

**§211.7 Initiating an informal DoD review of a proposed project.**

(a) An informal review of a project begins with the receipt from a requester by the Clearinghouse of a request for an informal review. In seeking an informal review, the requester shall provide the following information to the Clearinghouse:

(1) The geographic location of the project including its latitude and longitude,

(2) The height of the project,

(3) The nature of the project.

(4) The requester is encouraged to provide as much additional information as is available. The more information provided by the requester, the greater will be the accuracy and reliability of the resulting DoD review. When a request for an informal review

includes information that is proprietary or competition sensitive, requesters are encouraged to mark the documents they submit accordingly.

(b) The Clearinghouse shall, within five days of receiving the information provided by the requester, convey that information to those DoD Components it believes may have an interest in reviewing the request.

(1) The DoD Components that receive the request from the Clearinghouse shall provide their comments and recommendations on the request to the Clearinghouse no later than 30 days after they receive the request.

(2) Not later than 50 days after receiving the request from the requester, the Clearinghouse shall evaluate all comments and recommendations received and take one of three actions:

(i) Determine that the project will not have an adverse impact on military operations and readiness, in which case it shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(ii) Determine that the project will have an adverse impact on military operations and readiness but that the adverse impact involved is sufficiently attenuated that it does not require mitigation. The Clearinghouse shall notify the requester of such determination. In doing so, the Clearinghouse shall also advise the requester that the informal review by the DoD does not constitute an action under 49 U.S.C. 44718 and that neither the DoD nor the Secretary of Transportation are bound by the determination made under the informal review.

(iii) Determine that the project will have an adverse impact on military operations and readiness.

(A) When the requester is the project proponent, the Clearinghouse shall immediately—

(I) Notify the requester of the determination and the reasons for the conclusion of the Clearinghouse and advise the requester that the DoD would like

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to discuss the possibility of mitigation to reduce any adverse impact; and

(2) Designate one or more DoD Components to engage in discussions with the requester to attempt to mitigate the adverse impact.

(B) When the requester is a State, Indian tribal, or local official or a landowner, notify the requester of the determination and the reasons for that conclusion.

(c) If the requester is the project proponent and agrees to enter into discussions with the DoD to seek to mitigate an adverse impact, the designated DoD Components shall engage in discussions with the requester in an attempt to reach agreement on measures that would mitigate the adverse impact of the project on military operations and readiness.

### §211.8 Inquiries received by DoD Components.

(a) An inquiry received by a DoD Component other than the Clearinghouse relating to an application filed with the Secretary of Transportation pursuant to 49 U.S.C. 44718 shall be forwarded to the Clearinghouse by the DoD Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the inquiry.

(b) A request for informal DoD review or any other inquiry related to matters covered by this part and received by a DoD Component other than the Clearinghouse shall be forwarded to the Clearinghouse by that Component except when that DoD Component has been designated by the Clearinghouse to engage in discussions with the entity making the request.

### §211.9 Mitigation options.

(a) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the DoD Components designated to discuss mitigation with an applicant or requester shall, as appropriate and as time allows, analyze the following types of DoD mitigation to determine if they identify feasible and affordable actions that may be taken to mitigate adverse impacts of projects on military operations and readiness:

(1) Modifications to military operations.

(2) Modifications to radars or other items of military equipment.

(3) Modifications to military test and evaluation activities, military training routes, or military training procedures.

(4) Providing upgrades or modifications to existing systems or procedures.

(5) The acquisition of new systems by the DoD and other departments and agencies of the Federal Government.

(b) In discussing mitigation to avoid an unacceptable risk to the national security of the United States, the applicant or requester, as the case may be, should consider the following possible actions:

(1) Modification of the proposed structure, operating characteristics, or the equipment in the proposed project.

(2) Changing the location of the proposed project.

(3) Limiting daily operating hours or the number of days the equipment in the proposed structure is in use in order to avoid interference with military activities.

(4) Providing a voluntary contribution of funds to offset the cost of measures undertaken by the Secretary of Defense to mitigate adverse impacts of the project on military operations and readiness.

### §211.10 Reporting determinations to Congress.

(a) Not later than 30 days after making a determination of unacceptable risk pursuant to §211.6, the senior officer shall submit to the congressional defense committees a report on such determination and the basis for such determination.

(b) Such a report shall include—

(1) An explanation of the operational impact that led to the determination.

(2) A discussion of the mitigation options considered.

(3) An explanation of why the mitigation options were not feasible or did not resolve the conflict.